IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	:	CIVIL ACTION
V.	:	
EQUICREDIT CORPORATION OF AMERICA	:	NO. 02-CV-844

MEMORANDUM AND ORDER

HUTTON, J. October 8, 2002

Presently before the Court are Defendant's Motion to Dismiss or Alternately Motion for Summary Judgment (Docket No. 7), Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff EEOC's Opposition to Defendant's Motion to Dismiss (Docket No. 8), and Defendant's Reply Brief in Support of Motion to Dismiss or Alternately Motion for Summary Judgment (Docket No. 9).

I. BACKGROUND

Stacy Murray worked as a Mortgage processor in Defendant's Trevose, Pennsylvania office from November 24, 1997 until March 19, 2001. Murray alleges that from the beginning of 1998 until her separation, she was subjected to a sexually hostile work

environment. Specifically, Murray alleged that she was sexually harassed by Assistant Manager, Thomas Ligouri, and Senior Assistant Manager, Maurice Madison. Moreover, Murray asserted that she repeatedly reported these incidents to her Manager, Ron Price, to no avail.

On May 3, 2001, Stacy Murray filed charges of discrimination with the EEOC against her employer, Defendant Equicredit Corporation. See Deft. Ext. "A." On June 22, 2001, Cathleen Poor, the Vice-President of Defendant's Advice and Counsel Department, provided the Commission with Defendant's position statement. See Deft. Ext. "B." Ms. Poor interviewed the accused harassers and other Trevose employees. Id. Ms. Poor also reviewed personnel files and Defendant's Corporate Policies regarding sexual harassment and discrimination. Id. Defendant concluded upon internal investigation that no evidence existed to substantiate Ms. Murray's claim of sexual harassment. Id. As such, the Defendant sought to have the EEOC dismiss its charge of discrimination.

Upon receiving Defendant's request, EEOC investigator Mark Maddox told Ms. Poor that a corroborating witness existed. Thereafter, on December 18, 2001, the Commission issued a "cause finding" indicating that "the record contains strong corroborative evidence from a witness who supports charging party's allegation, and who was also sexually harassed by the Senior Assistant Manager." See Deft. Ext. "C." The finding also stated that the "evidence

establishes violations of Title VII, in that charging party and other females were sexually harassed." Id.

The EEOC invited the parties to resolve the matter, and forwarded a proposed conciliation agreement to Defendant, requesting a response within ten days. See Deft/ Ext. "C." On January 3, 2002, Defendant sent a letter to the EEOC, confirming their receipt of the letter and requesting an additional ten days to consider the offer. Deft. Ext. "D." The following day, Ms. Poor indicated that Defendant was considering a counter-offer to the EEOC's conciliation proposal. Thereafter, on January 9, 2002, Ms. Poor requested the identity of the corroborating witness from Mark Maddox. Mr. Maddox refused to divulge this information, explaining that it ran contrary to the EEOC's policy of not disclosing the identity of witnesses involved with the Commission's investigations. Ms. Poor indicated to Mr. Maddox that Defendant had an ongoing interest in amicable resolution, but that a conciliation agreement was "not possible" unless the EEOC produced the corroborating witness' identity, so as to allow Defendant to assess this witness' credibility. See "Poor Decl. at 15." On January 11, 2002, the Commission issued its Notice of Conciliation failure. See Deft. Ext. "D."

Defendant asserts a two part basis for its entitlement to relief: (1) Plaintiff failed to comply with its statutory duty to conciliate Stacey Murray's discrimination claim pursuant to Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-5(b), and (2)

Plaintiff failed to exhaust its administrative remedies with regard to the unnamed female referenced in the Complaint. For reasons set forth below, Defendant's Motion is **DENIED.**

II. LEGAL STANDARD

1. Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).[1] A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under the applicable rule of law. See id.

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[1] Plaintiff also filed a Motion to Dismiss pursuant to F.R.C.P. 12(b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993). In deciding a motion to dismiss, the district court may consider the allegations in the complaint, exhibits attached to the complaint and matters of public record. Excepted from this rule are "undisputably authentic document[s] that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on that document." Pension Ben. Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). It is undisputed that the several authentic EEOC documents that Defendant submitted may be considered in a motion to dismiss. Defendant also attached the declaration of Cathleen Poor, a document which is neither a matter of public record, attached to the complaint, nor relied on by Plaintiff.

If documents outside the scope of a Motion to Dismiss are submitted for consideration, the Court converts the motion to one for summary judgment. Id. at 1196. In the instant case, Defendant has moved for summary judgment in the alternative to its motion to dismiss.

When determining if a material fact exists, all evidence must be viewed in the light most favorable to the nonmoving party. Kober v. Mack Truck, Inc., No. CIV. A 94-2120, 1994 WL 702659 *1 (E.D. Pa. Dec. 15, 1994) (citing United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 994, 8 L.Ed.2d 176 (1982)). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id.

The party moving for summary judgment has the initial burden of showing the basis for its motion, see Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986), whereupon the burden shifts to the nonmovant to sufficiently establish any essential element to that party's case. Tenthoff v. McGraw-Hill, Inc., 808 F. Supp. 403, 405 (E.D. Pa. 1992) (citing Celotex Corp., 477 U.S. at 322-23)). A party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements, see Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992), as summary judgment may be granted if the evidence presented is "'merely colorable' or is 'not significantly probative.'" Tenthoff, 808 F. Supp. at 405 (citing Equimark Commercial Finance Co. v. C.I.T. Financial Services Corp., 812 F.2d 141, 144 (3d Cir. 1987)).

2. Title VII

A cause of action created by Title VII does not arise simply because of the occurrence of discriminatory events proscribed

thereunder. Hornsby v. United States Postal Service, 787 F.2d 87, 90 (3d Cir. 1986). Title VII mandates that certain prerequisites be met before the EEOC can file suit against a private employer.[2] See EEOC v. Dial Corp., 156 F. Supp 2d. 926, 933-34 (N.D. Ill. 2001). There must be a charge filed with the EEOC, a notice of charge served on the employer, an investigation by the EEOC which results in a determination of reasonable cause, and an attempt at conciliation. See Dial Corp., 156 F. Supp 2d. at 933-34; Ostapowicz v. Johnson Bronze Co., 541 F.2d 394, 398 (3d Cir. 1976). In the event that the EEOC's efforts to conciliate fail, it may then file a civil action in federal court. Dial Corp., 156 F. Supp 2d. at 934. These preliminary steps are integral to the statutory plan, which encourages resolution of claims, when possible, through informal channels such as conciliation and persuasion. Ostapowicz, 541 F.2d at 398.

III. DISCUSSION

1. Duty to Conciliate

Defendant first asserts that the EEOC failed to satisfy its statutory requirement to conciliate, thereby barring the instant action. This Court must, therefore, determine whether the EEOC made

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[2] 42 U.S.C.A § 2000e-5(b) states, in relevant part, "[i]f the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged employment practices by informal methods of conference, conciliation and persuasion."

an "attempt" at conciliation. EEOC v. Rhone-Poulenc, Inc., 677 F. Supp. 264, 266 (D. NJ. 1988). For the EEOC to satisfy the requirements of attempted conciliation, this circuit requires the EEOC to (1) inform the employer of how to come into compliance with the Act; (2) inform the employer that terminated employees may recover back pay; (3) notify employers that the EEOC may initiate legal proceedings and (4) assure employer that it may respond to the violations, in light of the possible remedy. Id.

Recognizing that conciliation requires a minimum of two parties, Courts have consistently evaluated one party's efforts at conciliation "'with an eye to the conduct of the other party.'" EEOC v. Prudential Federal Savings and Loan Association, 763 F.2d 1166, 1169 (10th Cir. 1985) (quoting Marshall v. Sun Oil Co., 605 F.2d 1331, 1335 (5th Cir. 1979)). The nature of conciliation requires a flexible and responsive process. EEOC v. Rymer Foods, Inc., No. 88 C 10680, 1989 WL 88243 (N.D. Ill. July 31, 1989) (citing Prudential Federal Savings and Loan Association, 763 F.2d at 1169). Consequently, conciliation varies from case to case. Id.

The EEOC is required to negotiate in good faith. Prudential Federal Savings and Loan Association, 763 F.2d at 1169. It is not, however, required to make an exhaustive investigation, nor prove discrimination to the employer's satisfaction. Id. To the contrary, the EEOC may meet the statutory requirements so long as it makes a reasonable effort to negotiate by providing Defendant with an

"'adequate opportunity to respond to all charges and negotiate possible settlements.'" Id. (quoting Marshall v. Hartford Fire Insurance Co., 78 F.R.D. 97, 103 (D. Conn. 1978)).

Defendant asserts that the case should be dismissed because the EEOC refused to disclose the identity of the corroborating witness.[3] The EEOC's failure to disclose allegedly prevented Defendant from receiving "critical" information, thus hindering its ability to assess the EEOC's position. Moreover, Defendant alleges that because Ms. Poor indicated to the EEOC that Defendant wished to discuss conciliation (with the caveat that the witness be identified), the EEOC's refusal to identify the witness was tantamount to unreasonable negotiations, which prevented Defendant from having an "adequate opportunity to respond to all charges," in violation of Title VII.

This Court disagrees. An a preliminary matter, the Court must confine its review of the conciliation process to whether the EEOC made a good faith effort to conciliate. The discretion as to the "form and substance" of what the conciliation proposal should include is vested in the EEOC as the agency created to administer and enforce our employment discrimination laws. EEOC v. Keco Industries, Inc., 748 F.2d 1097, 1102 (6th Cir. 1984). It will, therefore, not be subject to "judicial second-guessing." Dial Corp.,

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[3] The corroborating witness' name is Crystal Warfield.

156 F. Supp 2d. at 934.

The record indicates that the EEOC made a sincere and reasonable effort to negotiate in good faith, thereby fulfilling its obligations. The EEOC investigated Ms. Murray's claims. During the course of this investigation, the Commission discovered a witness who not only corroborated Ms. Murray's claims, but was herself a purported victim of discrimination. The EEOC served the Defendant with the charges, and later informed Defendant of the information uncovered during its investigation. Moreover, the EEOC forwarded its proposed conciliation agreement, inviting Defendant to either accept, or submit a counter-proposal. To keep conciliation a viable option, the EEOC extended the conciliation deadline by ten days. Mark Maddox communicated with Ms. Poor about the possibility of settling the matter without resort to formal court proceedings. It was only after such communications that Defendant indicated that a conciliation agreement was "not possible" without the name of the corroborating witness. The EEOC's failure to disclose the identity of a witness, however, does not render the effort to conciliate inadequate. See Id. at 942 (holding that the failure of the EEOC to identify class members during the conciliation does not render conciliation inadequate).

The EEOC is under no duty to attempt further conciliation after an employer rejects its offer. Keco Industries, Inc., 748 F.2d at 1101-02. While the burden upon the EEOC is to make a good faith

effort to conciliate, once the employer rejects the EEOC's conciliation attempts, the EEOC is permitted to file suit under Title VII. Keco Industries, Inc., 748 F.2d at 1102. Upon review of the record, negotiations only broke down after Defendant indicated that conciliation was "not possible." Therefore, because the EEOC made a good faith effort to conciliate and because the EEOC is free to file suit once Defendant rejects conciliation, Defendant's Motion for Summary Judgment is denied.

2. Exhausting Administrative Remedies

The Defendant's second basis for summary judgment is rooted in the EEOC's alleged failure to exhaust all administrative remedies with regard to Ms. Warfield. Before a Plaintiff can file a civil suit in federal court asserting a claim under Title VII, she must file a charge with the EEOC. Alexander v. Gardner-Denver Co., 415 U.S. 36, 47, 39 L.Ed.2d 147, 94 S.Ct. 1011 (1974). In the instant case, Ms. Warfield never filed a separate charge with the EEOC.

The EEOC is authorized to enlarge the scope of a charge filed by an individual if it uncovers related, additional violations during the course of an investigation. Rhone-Poulenc, Inc., 677 F. Supp. at 265. A complaint filed by the EEOC is not confined to the charge originally filed, rather, it is limited to the "investigation reasonably expected to grow out of the initial charge of discrimination." Id.; Keco Industries, Inc., 748 F.2d at 1101.

The test for determining whether Ms. Warfield was required to

file an individual claim is "whether the acts alleged in the subsequent Title VII suit are fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom." Waiters v. Parsons, 729 F.2d 233, 237 (3d Cir. 1984); see also Ostapowicz, 541 F.2d at 398-99 (noting that "[c]ourts have generally determined that the parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination"). Only additional and distinct claims require a separate investigation, reasonable cause determination and conciliation. Keco Industries, Inc., 748 F.2d at 1101.

Subsumed within its power to broaden the scope of a charge is the EEOC's power to seek relief on behalf of individuals not named as charging parties, who are identified during the course of an investigation "reasonably related in scope to the allegations of the underlying charge." Dial Corp., 156 F. Supp 2d. at 936 (quoting EEOC v. United Parcel Service, 94 F.3d 314, 318 (7th 1996).[4] See Keco Industries, Inc., 748 F.2d at 1101 (holding that the addition of other purported victims of discrimination merely broadened the scope of the named party's charge); see also Dial corp., 156 F. Supp 2d.

[4] see also General Telephone Company of the Northwest Inc., v EEOC, 446, U.S. 318, 331, 100 S.Ct 1698, 64 L.Ed.2d 319 (1980) (holding that "EEOC enforcement actions are not limited to the claims presented by the charging parties. Any violations that the EEOC ascertains in the course of a reasonable investigation of the charging party's complaint are actionable").

at 937 (holding that there is a reasonable relationship between the individual's initial charge and the EEOC's subsequent claim where the only discrepancy is the number of people victimized).

The purpose of an EEOC charge is to trigger an investigation and eventually the conciliation process. Dial Corp., 156 F. Supp 2d. at 938 n. 6 (citing General Electric Co., 532 F.2d 359 (4th Cir. 1976)). The charge is simply a "jurisdictional springboard," enabling the EEOC to begin its investigation of the alleged discrimination. Id. If during the course of an investigation, the EEOC discovers another violation, the EEOC is not compelled to ignore it until a new charge is filed, and another investigation is initiated. To require these duplicative efforts would produce nothing but an "inexcusable waste of valuable administrative resources and an intolerable delay in the enforcement of rights." Id. (citing General Electric Co., 532 F.2d at 365).

In the instant case, on November 19, 2001, the EEOC notified Defendant of a former employee who corroborated Ms. Murray's claim. On December 18, 2001, the Commission issued a determination letter finding that reasonable cause existed to believe that Title VII was violated with respect to both Stacy Murray and the unnamed corroborating witness. Certainly, the investigatory discovery of another female employee who was the subject of sexual discrimination by Defendant is "reasonably related" to the sexual discrimination charge filed by Ms. Murray against Defendant. The addition of Ms.

Warfield's claim merely broadened the scope of the original charge. Requiring Ms. Warfield to file a separate charge, thereby instituting a duplicative investigation, would only serve to waste time and resources. Accordingly, Defendant's Motion is denied.

An appropriate Order follows.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	:	CIVIL ACTION
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ORDER

AND NOW, this 8th day of October, 2002, upon consideration of Defendant's Motion to Dismiss or Alternately Motion for Summary Judgment (Docket No. 7), Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff EEOC's Opposition to Defendant's Motion to Dismiss (Docket No. 8), and Defendant's Reply Brief in Support of Motion to Dismiss or Alternately Motion for Summary Judgment (Docket No. 9), IT IS HEREBY ORDERED that Defendant's Motion is **DENIED.**

BY THE COURT:

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HERBERT J. HUTTON, J.